

## REMARKS

Original claims 1-14 remain in the application along with new claims 15-37. Claims 1-14 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,835,896 (Fisher et al). Fisher et al disclose a system and method for conducting a multi-person, interactive auction, in a variety of formats, without using a human auctioneer to conduct the auction. The system is implemented in software and allows a group of bidders to interactively place bids over a computer or communications network. The bids are recorded by the system and the bidders are updated with the current auction status information. When appropriate, the system closes the auction from further bidding and notifies the winning bidders and losers as to the auction outcome.

Applicants respectfully traverse the rejection.

The Examiner argues that Fisher et al shows a bid validator and a customer database which includes one customer record, which is created if a bid is received and no customer record exists for the bidder. The Examiner states that Fisher et al, however, does not show the second account record associated with a second bidder. The Examiner then concludes that it would have been obvious to one of ordinary skill in the art that the teachings of Fisher et al can be used to accomplish the functions of the second account record associated with the second bidder.

Applicant respectfully disagrees. Claim 1 recites, in part:

“1. An auction system for determining M winning bidder(s) from a plurality of potential bidders for N item(s) of merchandise, comprising:  
an auction server ... wherein the auction server reserves the second bid price from the second account record if the second bid is a valid bid....” (emphasis added)

Although Fisher et al describes an electronic auction system, Applicants system is distinguishable in that Applicants are not attempting to claim a generic electronic auction system. Rather, Applicant is attempting to claim an electronic auction system that incorporates the concept of reservations. In one embodiment of the present invention, the auction system accomodates a bidder who has a pre-existing account which contains items that are worth some monetary value. For example, the account contains incentive points earned through a history of transactions by that bidder.

When the second bidder (or the first bidder) submits a bid, the bid amount in the form of incentive points, in this one embodiment, is reserved from the bidder's account. This accomplishes two things: (1) the system checks to make sure the bidder has the points he wants to submit for his bid, and (2) in the event the bidder wins the bid, that bid amount of points is reserved. That bid amount is temporarily subtracted from the bidder's account balance. If he has enough more points left, he can use the remaining points for other items. If he has no more points left, he can not bid, or if he does not have enough points, he cannot use his remaining points for other items. If the bidder's bid amount, which was previously a winning bid amount, has been outbid by another bidder, the bidder's reserved bid amount is now unreserved.

This concept of reservation and unreservation of bid points can be achieved because the system uses a pre-existing bidder account which already contains points. Fisher et al fails to disclose or suggest this concept. Because Fisher et al deals with actual money via credit card usage, several implications follow:

- (1) Bidder need not have a pre-existing account and hence, as the Examiner pointed out, a customer record can be created on-the-fly as necessary when a bid is submitted;
- (2) No action involving the temporary reservation of bid amounts takes place since the back-end credit card transaction does not care about reservation. Indeed, even a credit card "limit" does not suggest any kind of reservation as described and claimed in the present application; and
- (3) If the bidder temporarily loses out on a bid, his original bid amount is not "unreserved" or "put back" for further use.

A relevant inquiry in determining whether a particular reference should be used against the claimed invention is the relationship between the problem which the inventor was attempting to solve and the problem to which any reference is directed. If a person of ordinary skill in the art does not understand the problem to which the invention is responsive, then its solution can hardly be obvious.

Fisher et al was trying to solve the problems associated with the traditional auction where physical presence is necessary. In addition, telephone auctions had problems with its non-real time nature in being less than optimum in notifying bidders that they were outbid in a timely manner. Fisher et al merely describes an electronic auction system that was sufficiently automated to improve the auction system. Fisher did not address auction systems based on points

and what ramifications that would cause, and accordingly, discloses no conception or understanding of reservation of points from a bidder's account.

Accordingly, Applicant respectfully requests reconsideration of the rejection based on Fisher et al. and the allowance of claim 1.

Claims 2-7 depend on independent claim 1. The arguments for claim are repeated for these dependent claims.

Although the Examiner admits that unreserving is not mentioned in Fisher et al, he argues that Fisher et al shows the use of "error messages" when an invalid bid is submitted. The "error message" taught by Fisher et al has no relationship to the customer account; rather, it's tied to the bid amount that is independent of the customer's record. In the present invention, the concept of reservation and unreservation is described and claimed because the bidder has a particular amount in his account which he cannot exceed. As an example, if one has only 2,000 points, he cannot bid more than 2,000 points .

Accordingly, Applicants respectfully request reconsideration of the rejection based on Fisher et al. and the allowance of claims 2-7.

Claim 8 is also rejected as obvious in view of Fisher et al. Claim 8 recites, in part:

"8. An auction processing server for allowing a plurality of bidders to bid on at least one item, comprising:  
a second logic for reserving the bidder-selected number of payment units in the bidder's respective account record if the selected number of payment units is available in the account record...." (emphasis added)

Applicants respectfully incorporate the arguments made above relative to claims 1-7 in response to the Examiner's arguments regarding independent claim 8 and dependent claims 9-10. Similarly, independent claim 11 and dependent claims 12-14 also recite Applicants' "reservation" concept and as such, Applicants incorporate the arguments made above to rebut the rejection.

Accordingly, Applicants respectfully request reconsideration of the rejection based on Fisher et al. and the allowance of claims 8-14.

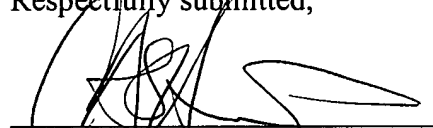
Applicants further assert that new claims 15-37 also recite novel and nonobvious features such as the reservation concept, as argued above. Accordingly, Applicants respectfully requests allowance of new claims 15-37.

Applicants note the additional art cited as of interest and agree with the Examiner that the disclosures thereof fail to show or suggest Applicants' invention as now recited.

### CONCLUSION

Having explained and clarified the patentability of the present invention, as recited in existing claims 1-14 and new claims 15-37, and having pointed out the nonobviousness of the present invention in light of Fisher et al. Applicants submit that this application is now ready for allowance and an early notice thereof is solicited. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the attorney of record at the number set out below.

Respectfully submitted,



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Dated: November 21, 2002

**OPPENHEIMER WOLFF & DONNELLY LLP**

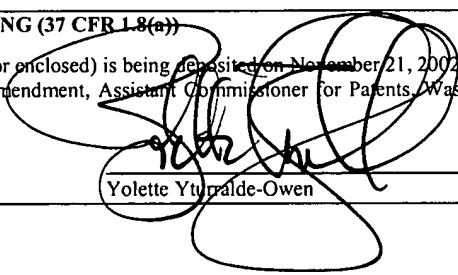
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#### CERTIFICATE OF MAILING (37 CFR 1.8(a))

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Date: November 21, 2002



Yvette Yturralde-Owen